72-449

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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 72-449

CAPITOL TILE AND MARBLE, INC.
and
THE HOME INDEMNITY COMPANY, *Petitioners*

vs.

WILLIAM E. DEESE, *Respondent*

PETITION FOR WRIT OF CERTIORARI

HEENEY, MCAULIFFE AND MCAULIFFE
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IN THE

Supreme Court of the United States

No.

CAPITOL TILE AND MARBLE, INC.
and
THE HOME INDEMNITY COMPANY, *Petitioners*

vs.

WILLIAM E. DEESE, *Respondent*

PETITION FOR WRIT OF CERTIORARI

Capitol Tile and Marble, Inc., and the Home Indemnity Company, by their attorneys, Heeney, McAuliffe and McAuliffe, respectfully petition this Honorable Court for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit, for a review of a final judgment of that Court, and for reasons therefor state:

I. OPINION OF COURTS BELOW

All Orders and Opinions in this case are unreported and are as follows:

A. Compensation Order of the Deputy Commissioner, United States Department of Labor, Bureau of Employees' Compensation, District of Columbia Compensation District, dated December 8, 1969, appended hereto.

B. Opinion and Order of the United States District Court for the District of Columbia dated December 23, 1970, appended hereto.

C. Opinion and Order of the United States District Court for the District of Columbia dated February 17, 1971, appended hereto.

D. Order of the United States Court of Appeals for the District of Columbia dated June 19, 1972, appended hereto.

II. GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

Judgment was entered in this case in the United States Court of Appeals for the District of Columbia Circuit on June 19, 1972, affirming the judgment of the United States District Court for the District of Columbia. Jurisdiction to review this judgment of the United States Court of Appeals for the District of Columbia Circuit is granted by 28 U.S.C. 1254 (1).

III. QUESTIONS PRESENTED

A. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CAN BY "LEGISLATIVE INTERPRETATION" ABROGATE A CLEAR AND UNAMBIGUOUS PROVISION OF AN ACT OF CONGRESS, AS APPLIED TO THE DISTRICT OF COLUMBIA.

B. WHETHER THE DISTRICT OF COLUMBIA HAD THE NECESSARY SUBSTANTIAL OR SUFFICIENT INTEREST IN THIS CASE TO CONSTITUTIONALLY APPLY ITS COMPENSATION LAWS TO THE PARTICULAR WORK RELATED INJURY.

IV. CONSTITUTIONAL PROVISIONS AND STATUTES

A. Fifth Amendment to the Constitution of the United States:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

B. Fourteenth Amendment to the Constitution of the United States, Section 1.:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

C. District of Columbia Code, Section 36-501:

> "The provisions of chapter 18 of title 33, U. S. Code, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee or an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such

provisions the term 'employer' shall be held to mean every person carrying on any employment in the District of Columbia, and the term 'employee' shall be held to mean every employee of such person. (May 17, 1928, 45 Stat. 600, ch. 612, § 1.)"

D. 33 U.S.C. 921:

"(a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 919 of this title, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

"(b) If not in accordance with law, a compensation order may be suspended or set aside, with in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the United States District Court for the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto,

that such irreparable damage would result to the employer, and specifying the nature of the damage.

"(c) If any employer or his officers or agents fails to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order, may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the United States District Court for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

"(d) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 918 of this title."

V. STATEMENT OF THE CASE

William E. Deese, hereinafter referred to as the Employee, was injured on April 20, 1968, while in the employ of Capitol Tile and Marble, Inc., hereinafter referred to along with its insurer, The Home Indemnity Company, as the Employer. The injury took place at the job site on the campus of the University of Maryland in College Park, Maryland. The Employee subsequently on April 16, 1969, filed a claim for workmen's compensation in the District of Columbia, pursuant to the provisions of the Longshoremen's and Harbor Workers' Compensation Act of March 4,

1927, 44 Stat. 1424, as amended, 33 U.S.C. 901, *et seq.*, as made applicable to the District of Columbia by the Act of May 17, 1928, 45 Stat. 600, D. C. Code 36-501.

The evidence before the Deputy Commissioner at the hearing on October 21, 1969, showed the following:

A. The injury occurred in Maryland.

B. The Employee was a resident of Maryland.

C. The contract of employment was made in Maryland.

D. The vast majority of the Employee's work took place in Maryland; viz. sixty-two per cent (62%) in Maryland, thirty-two per cent (32%) in the District of Columbia, and six per cent (6%) in Virginia.

E. The Employer is a Maryland corporation with its principal office located in Maryland.

F. Seventy-five per cent (75%) of the Employer's business was conducted in Maryland, as opposed to approximately eighteen per cent (18%) in the District of Columbia.

The Deputy Commissioner on December 8, 1969, found that the claim did not come under the jurisdiction of the District of Columbia Workmen's Compensation Act.

The Employee then appealed this decision to the United States District Court for the District of Columbia on January 7, 1970. There being no dispute as to the material facts of this case, the parties filed Motions for Summary Judgment. On December 23, 1970, Judge Oliver Gasch granted the Employee summary judgment, finding that the Deputy Commissioner was incorrect in holding that there was no jurisdic-

tion for this claim under the Workmen's Compensation Act of the District of Columbia.

Subsequently on February 2, 1971, the Employer filed a Motion to Vacate this judgment and to Dismiss the Case. This Motion was based upon the fact that the exclusive method of judicial review of Compensation Orders as provided by the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 921, provides that an appeal from a Deputy Commissioner's Compensation Order must be taken in the judicial district in which the injury occurred, the injury in this case having occurred in Maryland.

On February 17, 1971, the Employer's Motion to Vacate the judgment already entered and to Dismiss the Case was denied by Judge Gasch.

The Employer thereupon noted an appeal from both Orders, and both appeals were consolidated in the United States Court of Appeals for the District of Columbia Circuit. Subsequently on June 19, 1972, the Court of Appeals affirmed the United States District Court.

VI. ARGUMENT

A. Whether the United States Court of Appeals for the District of Columbia Circuit Can by "Legislative Interpretation" Abrogate a Clear and Unambiguous Provision of an Act of Congress, as Applied to the District of Columbia.

The United States Court of Appeals for the District of Columbia Circuit has by judicial fiat, under the guise of interpreting legislative intent, changed the clear meaning of a provision of an Act of Congress, 33 U.S.C. 901-950. This Act, known as the Longshoremen's and Harbor Workers' Compensation Act, was adopted as the Workmen's Compensation

Act for the District of Columbia by Public Act No. 419 of the Seventieth Congress, District of Columbia Code 36-501. The exclusive method of judicial review of Compensation Orders is provided by 33 U.S.C. 921 (b) and (d). As noted above, the United States Congress adopted Section 921 intact and without change, as a part of the Workmen's Compensation Law of the District of Columbia, and thereby provided the same, and the only method of appellate review as existed in any other case brought under the Longshoremen's and Harbor Workers' Compensation Act.

In every case found by counsel interpreting 33 U.S.C. 921 (b) and (d), it has been held that the designation of the judicial district in which the proceedings for review must be brought is jurisdictional, and does not relate merely to venue. *Continental Fire and Casualty Insurance Co.* v. *O'Leary,* 9th Cir., 1956, 236 F.2d 282; *Bassett* v. *Massman Construction Company,* 8th Cir., 1941, 120 F.2d 230, cert. den., 314 U.S. 648, 62 S.Ct. 92; *Hughes* v. *Quigley,* D.C.NJ., 184 F.Supp. 568; *Independent Pier Co.* v. *Norton,* D.C.Pa., 1942, 47 F.Supp. 1020. It is now apparent that the United States Court of Appeals for the District of Columbia Circuit, alone, is in disagreement with the Eighth and Ninth Circuits in their interpretation and application of 33 U.S.C. 921.

There was no dispute in this case that the injury occurred in College Park, Maryland. This fact required that any appeal from the Deputy Commissioner's Compensation Order of December 8, 1969, should have been prosecuted in the United States District Court for the District of Maryland. Therefore, the United States District Court for the District of Co-

lumbia had no jurisdiction to determine any question arising under the Deputy Commissioner's Order and the Court's finding as to its own jurisdiction was incorrect.

It is respectfully submitted that as the decision of the United States Court of Appeals for the District of Columbia Circuit in this case is in direct and unyielding conflict with the decisons of the United States Courts of Appeal for the Eighth and Ninth Circuits, and as the United States Court of Appeals for the District of Columbia has, under the euphemism of "interpretation of legislative intent" modified a clear and unambiguous provision of an Act of Congress; certiorari to the United States Court of Appeals for the District of Columbia Circuit should be granted.

3. Whether the District of Columbia Had the Necessary Substantial or Sufficient Interest in This Case to Constitutionally Apply Its Compensation Laws to the Particular Work Related Injury.

This case presents for resolution the precise question left open by this Court in *Cardillo* v. *Liberty Mutual Insurance Company,* 330 U.S. 469, 67 S.Ct. 801 (1947). In finding the jurisdictional section of the Act constitutional *as applied* to the facts of that case, this Court at pages 475-476 said:

> "Whether this language covers employees who are more *remotely related* to the District is a matter which we need not discuss and any arguments based upon such hypothetical situations are without weight in this case." (Emphasis supplied.)

The application of the broad language of the Act so as to include the factual situation of this case does violence to the due process and full faith and credit clauses of the Constitution, as interpreted by previous decisions of this Court.

The essence of the compensation jurisdictional question here is not whether Maryland or the District of Columbia has the right, to the exclusion of the other, to apply its statute, but whether the District of Columbia has a *sufficient* interest in the case to justify applying its statute; or stated another way, when can the District of Columbia constitutionally apply its statute to a particular work related injury. The inescapable conclusion is that any sovereignty having a legitimate interest in the injury and its effects on a workman, the employer or the community can apply its statute without violating due process of law or full faith and credit.

The existence of a legitimate interest in the injury and its consequences was held as the controlling constitutional test in this Court's decision in *Cardillo* v. *Liberty Mutual Insurance Company, supra.* In that case, the employee's residence, the employer's business headquaters and the original place of hiring, were all in the District of Columbia, while Virginia was the site of the current work, which had been going on for three years, and also the place of the injury. This Court, in stating its rationale, said at page 476:

> "A prime purpose of the Act is to provide *residents* of the District of Columbia with a practical and expeditious remedy for their industrial accidents and to place on District of Columbia employers a limited and determinate liability." (Emphasis supplied.)

The State in which the employer's business is localized has a relevant and legitimate interest in a compensable injury. While the place of the employee's residence or location at the time of the injury, as discussed above, carries great weight as to the benefits,

conversely the burden to be imposed also carries a legitimate interest. Thus, the community of the employer's business must carry the burden and has an interest in the amount and manner of imposing liability on the employer.

This Court, in *Cardillo* v. *Liberty Mutual Insurance Company, supra,* enunciated what is now known as the "employer-employee relationship" test. There at page 476 the Court stated:

> "In other words, the District's legitimate interest in providing adequate workmen's compensation laws for its *residents* does not turn on the fortuitous circumstances of the place of their work or injury. Nor does it vary with the amount or percentage of work performed within the District. Rather, it depends upon some *substantial connection* between the District and the particular employee-employer relationship, a connection which is present in this case. (Citing cases.) And *as so applied* the statute fully satisfies and constitutional questions of due process of full faith and credit." (Emphasis supplied.)

In *Cardillo, supra,* this Court held the District of Columbia had a substantial interest, and thus constitutionally could take jurisdiction and apply its "workmen's compensation laws", as under the facts of *Cardillo, supra;* i.e. the employee's residence, the employer's business headquarters and the original place of hiring, were all in the District of Columbia, while the accident had taken place in the Commonwealth of Virginia, the District of Columbia had a substantial interest in providing its residents with a remedy for their industrial accident and to place on District of Columbia employers a limited and determinate liability.

Turning now to the facts of the instant case, it is apparent that the injury accurred in Maryland, the Employee was a resident of Maryland, the contract of employment was made in Maryland, the majority of the Employee's work took place in Maryland (viz. sixty-two per cent (62%) in Maryland, thirty-two per cent (32%) in the District of Columbia, and six per cent (6%) in Virginia), the Employer is a Maryland corporation with its principal office located in Maryland, and has no office in the District of Columbia, and seventy-five per cent (75%) of the corporation's business was conducted in Maryland, as opposed to approximately eighteen per cent (18%) in the District of Columbia. There is no dispute as to the accuracy of these facts.

Under these facts, it is readily apparent that the District of Columbia had no relevant and legitimate interest in asserting jurisdiction. Constitutional requirements of due process and full faith and credit, as enunciated in *Alaska Packers Association* v. *Industrial Accident Commission,* 294 U.S. 532, 55 S.Ct. 518 (1935); *Pacific Employer's Insurance Company* v. *Industrial Accident Commission,* 306 U.S. 493, 59 S.Ct. 629 (1939); and *Cardillo* v. *Liberty Mutual Insurance Company,* supra, dictate that under this factual situation the Deputy Commissioner was correct in rejecting this claim for lack of jurisdiction.

The instant case squarely presents the issues left open in *Cardillo, supra.* These are important issues to both employers and employees. If the judgment of the United States Court of Appeals for the District of Columbia Circuit were to stand, chaos could well result in the administration of industrial accident claims. An insurance carrier could not determine the

proper premium rates based upon all available pertinent data, and no employer will have a fixed and determined liability. Under the rationale of the decison of the United States Court of Appeals, any employee, even though a non-resident of the District of Columbia, even though injured in another State, and even though the District of Columbia had no relevant interest in the outcome, could file his claim for compensation under District of Columbia law, as long as he and the employer had done some work within the District of Columbia in the past.

VII. CONCLUSION

For the foregoing reasons, Petitioners respectfully submit that a Writ of Certiorari should issue to the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1971

Civil Action No. 36-70

No. 71-1236

WILLIAM E. DEESE

v.

NOAH C. A. WALTER, Deputy Commissioner, U. S. Department of Labor, Bureau of Employees' Compenstion

* * *

CAPITOL TILE AND MARBLE, INC. and THE HOME INDEMNITY COMPANY, *Appellants*

Filed June 19, 1972

Appeal from the United States District Court for the District of Columbia.

Before: BAZELON, Chief Judge, WRIGHT, Circuit Judge, and CHARLES EDWARD WYZANSKI, JR.,* Senior United States District Judge, District of Massachusetts.

Judgment

This case came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the court. *See* Local Rule 13(c).

Per Curiam

* Sitting by designation pursuant to 28 U.S.C. § 294(d) (1970).

On consideration of the foregoing, and for the reasons stated by the District Court, it is ORDERED and ADJUSTED by this court that the judgments of the District Court appealed from in this cause are hereby affirmed.

Filed Feb. 17, 1971

Order

This matter came on for consideration on intervenors' motion to vacate judgment and to dismiss the case. Briefs were submitted and counsel argued the motion in open Court on February 12, 1971. Intervenors' motion to the effect that the Court lacked jurisdiction to have decided the present matter. Intervenors' motion rests upon an interpretation of Section 921 of the Longshoremen's and Harborworkers' Compensation Act (33 U.S.C. § 901 et seq.), as made applicable to the District of Columbia by virtue of Title 36, District of Columbia Code, Section 501, Intervenors contend that the exclusive method of judicial review of actions of the Deputy Commissioner is provided by 33 U.S.C. § 921, to the effect that an appeal may be brought in the Federal district court for the judicial district in which the injury occurred or in the United States District Court for the District of Columbia if the injury occurred in the District. In support of this point intervenors rely on cases in the 8th and 9th Circuits,[1] holding that Section 921 is jurisdictional and not just a question of venue. The Deputy Commissioner and the plaintiff both strenuously oppose the intervenors' motion to dismiss. They cite in their briefs numerous cases in which injury occurred in a place other than in the District of Columbia yet where the jurisdiction of the District Court to decide the matter was assumed

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[1] *Continental Fire and Casualty Insurance Company* v. *O'Leary*, 236 F.2d 282 (9th Cir. 1956); *Bassett* v. *Massman Construction Company*, 120 F.2d 230 (8th Cir. 1941), *cert. den.* 314 U.S. 648 (1941).

without discussion.[2] The Court finds that in view of these numerous decisions in the United States Court of Appeals for the District of Columbia and also in the Supreme Court of the United States, jurisdiction is properly vested in the District Court for the District of Columbia. To hold otherwise would be to deny a forum to those employees covered by the D. C. Workmen's Compensation Act who are injured outside the United States. Intervenors tried to distinguish these situations from the present case. The Court finds, however, no adequate basis for distinction. This decision is in part motivated by the unique position of the District of Columbia and the extraterritorial provisions of its Workmen's Compensation Act.

It is therefore by the Court this 17 day of February, 1971,

ORDERED that the intervenors' motion to vacate judgment and to dismiss the case be and the same hereby is overruled.

OLIVER GASCH
Judge

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[2] *Cardillo, Deputy Commissioner* v. *Liberty Mutual Insurance Co.*, 330 U.S. 469, 472 (1947), rev'g 81 U.S.App.D.C. 72, 154 F.2d 529, Fort Belvoir, Va.; *Amalgamated Ass'n* v. *Adler, Deputy Commissioner*, 119 U.S.App.D.C. 274, 340 F.2d 799, 800 (1964), Toronto, Canada; *U. S. Fidelity & Guaranty Co.* v. *Donovan, Deputy Commissioner*, 221 F.2d 515, 517 (1954), Maryland; *Jonathan Woodner Co.* v. *Mather*, 93 U.S.App.D.C. 234, 210 F.2d 868, 869 (1954), *cert. den.* 348 U.S. 824, Maryland; *Robinson* v. *Bradshaw, et al.*, 92 U.S.App.D.C. 216, 206 F.2d 435 (1953), *cert. den.* 346 U.S. 899, Wakefield, Va.; *Gasch* v. *Britton, Deputy Commissioner*, 92 U.S.App.D.C. 64, 202 F.2d 356, 357 (1953), Maryland; *Travelers Ins. Co.* v. *Cardillo, Deputy Commissioner*, 78 U.S.App.D.C. 392, 141 F.2d 362, 363 (1944), Maryland; *Travelers Ins. Co.* v. *Cardillo, Deputy Commissioner*, 78 U.S.App.D.C. 394, 141 F.2d 364 (1944), Virginia; *B. F. Goodrich Co., et al.* v. *Britton, Deputy Commissioner*, 78 U.S.App.D.C. 221, 139 F.2d 362, 364 (1943), Pennsylvania; *Moyer* v. *Cardillo, Deputy Commissioner*, 73 U.S. App.D.C. 261, 119 F.2d 785 (1941), Maryland; *Standard Acc. Ins. Co.* v. *Hoage, Deputy Commissioner*, 62 App.D.C. 245, 66 F.2d 275 (1933), Virginia.

Order

This matter came on before the Court on cross motions for summary judgment. The plaintiff seeks a reversal of the defendant Deputy Commissioner's rejection of his claim for workmen's compensation benefits pursuant to 33 U.S.C. § 901 *et seq.* and 36 D.C. Code § 501.

The Deputy Commissioner denied the benefits stating that claim did not come within the jurisdiction of the District of Columbia workemen's Compensation Act. The pertinent section of the Act reads as follows:

> The provisions of Title 33, Chapter 18 of the Code of Laws of the United States, including all amendments ... shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term 'employer' shall be held to mean every person carrying on any employment in the District of Columbia, and the term 'employee' shall be held to mean every employee of any such person. (36 D.C. Code § 501).

This section of the Code has been interpreted in a number of cases,[1] the leading one being *Cardillo* v. *Liberty Mutual Insurance Co.*, 330 U.S. 469 (1947):

> Nothing in the history, the purpose or the language of the Act warrants any limitation which would preclude its application to this case. The Act in so many words applies to every employee of an employer carrying on any employment in the District of Columbia 'irrespective of the place where the injury or death

[1] *Gudmundson* v. *Cardillo*, 126 F.2d 521 (1942); *United States Fidelity and Guaranty Co.* v. *Donovan*, 221 F.2d 515 (1954); *Travelers Insurance Company* v. *Cardillo*, 141 F.2d 362 (1944); *Moyer* v. *Cardillo*, 119 F.2d 785 (1941); *J. V. Vozzolo, Inc.* v. *Britton*, 377 F.2d 144 (1967).

occurs.' Those words leave no possible room for reading in an implied exeception excluding those employees like Ticer who have substantial business and personal connections in the District and who are injured outside the District. (at 475)).

• • •

Rather it depends upon some substantial connection between the District and the particular employee-employer relationship, a connection which is present in this case. (at 476).

The *Cardillo* case has been augmented by a number of cases which decided on a case-by-case base whether there were sufficient contracts with the District.

In the instant case there would appear to be a number of contracts of the plaintiff with the District (the plaintiff spent one third of his time working in the District; the employer has considerable work in the District, at the time of the injury four of seven jobs were in the District; the plaintiff worked in the District the very morning he was injured; the plaintiff was paid in the District whenever he was working there). The Court, therefore, finds that there was "some substantial connection" between the plaintiff and the District of Columbia and for this reason feels that the decision of the Deputy Commissioner was apparent error and should be reversed.

Wherefore, it is by the Court this 23rd day of December, 1970,

ORDERED that the plaintiff's motion for summary judgment be and the same hereby is granted; and it is further

ORDERED that the defendant's motion for summary judgment be and the same hereby is denied.

OLIVER GASCH
Judge

UNITED STATES DEPARTMENT OF LABOR
BUREAU OF EMPLOYEES' COMPENSATION
DISTRICT OF COLUMBIA COMPENSATION DISTRICT

Case No. 36718

In the matter of the claim for compensation under the District of Columbia Workmen's Compensation Act

WILLIAM E. DEESE *Claimant*

VS.

CAPITOL TILES & MARBLE, INC. *Employer*

THE HOME INDEMNITY COMPANY *Insurance Carrier*

Compensation Order
Rejection of Claim

Such investigation in respect to the above-entitled claim having been made as is considered necessary, and a hearing having been duly held in comformity with law, the Deputy Commissioner makes the following

FINDINGS OF FACT

1. That on April 20, 1968, the claimant above named was in the employ of the employer above named, whose address is 2413 Kenton Place, Hillcrest Heights, Maryland; that the employer was subject to the provisions of an Act of Congress approved May 17 1928, entitled "An Act to provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia, and for other purposes"; that the liability of the employer for compensation under the said Act was insured by the Home Indemnity Company;

2. That on the said day the claimant, while performing services for the employer as a tile mechanic at Maryland University in the State of Maryland, slipped and twisted his left knee when he attempted to get up from a stooped postion, which caused him to fall to the floor, as a consequence of which he suffered an injury to his left knee and right hand; that subsequent to the injury of April 20, 1968, sustained by the claimant in Maryland, he worked at Saint Elizabeth's Hospital in Washington, D.C.;

3. That on April 16, 1969, the claimant filed for compensation payments for temporary total disability from February 15, 1969 to April 27, 1969, and for reasonable medical expenses under the District of Columbia Workmen's Compensation Act;

4. That a hearing was held on the said claim on October 21, 1969, at which time the employer and the insurance carrier raised objections to the said claim, including the objection that the claim does not come under the jurisdiction of the District of Columbia Workmen's Compensation Act;

5. That the claimant was a resident of Maryland, and was for a period of one and one-half years in the employ of Capitol Tiles & Marble Company, 2413 Kenton Place, Hillcrest Heights, Maryland; that the claimant was a member of local No. 3, Terrazzo and Tile Workers Union, AFL-CIO with headquarters in the District of Columbia; that the claimant was subject to assignment by the employer to perform duties of the employment in Maryland, Virginia and the District of Columbia; that the employer was licensed to perform business in the District of Columbia; that the claimant was not performing any services for the employer in the District of Columbia within the meaning of the District of Columbia Workemen's Compensation Act at the time of his injury of April 20, 1968.

Upon the foregoing findings of fact, it is ordered by the Deputy Commissioner that the claim for the compensation against the employer under the District of Columbia Workmen's Compensation Act be and it hereby is REJECTED for the following reason:

1. That the claim does not come under the jurisdiction of the District of Columbia Workmen's Compensation Act.

Given under my hand and filed at Washington, D. C. this eighth day of December, 1969.

NOAH C. A. WALTER
Deputy Commissioner
District of Columbia Compensation District

COPY

OCT 19 1972

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

Case No. 72-449

CAPITAL TILE AND MARBLE COMPANY, INC.

and

THE HOME INDEMNITY COMPANY,

Petitioners,

v.

WILLIAM E. DEESE,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the District of Columbia

BRIEF FOR RESPONDENTS IN OPPOSITION

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IN THE

Supreme Court of the United States

Case No. 72-449

CAPITAL TILE AND MARBLE COMPANY, INC.

and

THE HOME INDEMNITY COMPANY,

Petitioners,

v.

WILLIAM E. DEESE,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

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BRIEF FOR RESPONDENTS IN OPPOSITION

I. DECISIONS BELOW

Respondent respectfully submits that the decisions below are adequately set forth in the Petition.

II. JURISDICTION

Respondent respectfully submits that the jurisdictional requisites are adequately set forth in the Petition.

III. QUESTIONS PRESENTED

A. WHETHER THE EXTRATERRITORIAL PROVISIONS OF THE DISTRICT OF COLUMBIA WORKMEN'S COMPENSATION LAW ESTABLISH THAT THE DISTRICT COURT HAD JURSIDICTION TO HEAR AND DECIDE THE APPEAL FROM THE COMPENSATION ORDER.

B. THE EVIDENCE DEMONSTRATES THAT SUBSTANTIAL CONNECTIONS EXISTED BETWEEN THE EMPLOYEE-EMPLOYER RELATIONSHIP AND THE DISTRICT OF COLUMBIA SO AS TO SUPPORT THE FINDING OF THE DISTRICT COURT AND THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA THAT THE DEPUTY COMMISSIONER HAD JURISDICTION OVER THE CLAIM.

IV. CONSTITUTIONAL PROVISIONS AND STATUTES

Respondent respectfully submits that the statutes and constitutional provisions involved are adequately set forth in the Petition.

V. STATEMENT OF THE CASE

On April 20, 1966, William E. Deese, hereinafter referred to as the Employee, was working as a tile mechanic for Capitol Tile and Marble, Inc., hereinafter referred to as Employer. On the aforementioned date, the Employee suffered an injury to his knee at a jobsite at the University of Maryland.

Following this injury, the Employee filed a claim for compensation in the District of Columbia pursuant to the

provisions of the Longshoremen's and Harborworker's Compensation Act, as amended 33 U.S.C. 901 *et seq.*, as made applicable to the District of Columbia by D.C. Code 36-501. A hearing was held on this claim on October 21, 1969. At that hearing, the Employee testified that he performed approximately thirty per cent of his work in the District of Columbia and that he was subject to being assigned to jobs in the District at the discretion of the Employer. Additionally, the Employee stated that he was a member of Local No. 3 of the Terrazo Workers and Tile Setters Union, whose union hall is located in the District.

Further testimony at this hearing revealed that the Employer was licensed to do business in the District of Columbia, did in fact conduct business in the District of Columbia, and also paid a substantial amount in taxes to the District. During the year preceding the injury, (March, 1967 - March, 1968) the Employer had paid out approximately $17,500 in salaries to various employees working in the District of Columbia. At the time of the accident giving rise to the injury four of the seven projects that the Employer was engaged in were located in the District of Columbia. One of these four projects was at St. Elizabeth's Hospital, where the employee had worked on the morning of the same day on which he was injured. It was further stated that when the Employee worked on projects in the District, his salary check was brought to him at the job site.

On the basis of this record, the Deputy Commissioner entered a compensation order on December 8, 1969, stating that the claim did not come under the jurisdiction of the District of Columbia Workmen's Compensation Act.

The Employee appealed this decision to the United States District Court for the District of Columbia. Subsequently,

the Employee's motion for summary judgement was granted and the finding by the Deputy Commissioner that there was not jurisdiction for the claim was reversed.

On February 2, 1971, the Employer filed a Motion to Vacate this judgement and to Dismiss the Case, based on the contention that the appeal from the compensation order should have been taken in the judicial district in which the injury occurred. This Motion was denied on February 17, 1971.

The Employer thereupon noted an appeal from both Orders of the District Court, and both appeals were consolidated in the United States Court of Appeals for the District of Columbia. On June 19, 1972, the Court of Appeals affirmed the decision of the District Court.

VI. ARGUMENT

A. THE EXTRATERRITORIAL PROVISIONS OF THE DISTRICT OF COLUMBIA WORKMEN'S COMPENSATION LAW ESTABLISH THAT THE DISTRICT COURT HAD JURISDICTION TO HEAR AND DECIDE THE APPEAL FROM THE COMPENSATION ORDER.

The proper procedure for obtaining judicial review of compensation orders is to be found in Section 21(b) of the Longshoremen's and Harborworker's Compensation Act, 33 U.S.C. 921(b), pertinent parts of which read as follows:

> "(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought

> by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court in which the injury occurred (or in the United States District Court for the District of Columbia if the accident occurred in the District) . . ."

This section, however, when applied to situations involving the District of Columbia, must be read in conjunction with the District of Columbia Workmen's Compensation Law, D.C. Code 36-501, which states:

> "The provisions of the Longshoremen's and Harborworker's Compensation Act, including all amendments . . . shall apply in respect to the injury or death of an employee of an *employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs;* except that in applying such provisions the term 'employer' shall be held to mean *every* person carrying on *any* employment in the District of Columbia, and the term 'employee' shall be held to mean every employee of any such person." (Emphasis supplied)

The combined effect of these two statutes has been to vest jurisdiction in the District Court for the District of Columbia when an employee of an employer who carries on any employment in the District of Columbia is injured while working in another jurisdiction. This extraterritorial application of the law is permissible when " . . . [there exists] some substantial connection between the District and the particular employee-employer relationship . . . " *Cardillo v. Liberty Mutual Insurance Co.*, 330 U.S. 469,

476 (1947). Once these connections are established, the fact that the accident occurred in another jurisdiction is immaterial inasmuch as the words of the Act leave no room for implying an exception excluding employees who have substantial business and personal connections in the District, but who are injured outside its borders. *Cardillo v. Liberty Mutual Insurance Co., supra,* at 475.

The extraterritorial application of the District of Columbia Workmen's Compensation Act has been sustained by the Courts on numerous occasions. *Cardillo v. Liberty Mutual Insurance Company, supra; United States Fidelity and Guaranty Company v. Donovan,* 94 U.S. App. D.C. 377, 221 F.2d 515 (1954); *Travelers Insurance Company v. Cardillo,* 78 App. D.C. 392, 141 F.2d 362 (1944); *Travelers Insurance Company v. Cardillo,* 78 App. D.C. 394, 141 F.2d 364 (1944); *Moyer v. Cardillo,* 73 App. D.C. 261, 119 F.2d 785 (1941). The cumulative effect of these decisions has been to equate an injury which occurs outside the District under the above conditions with an injury which occurs in the District.

In his Order denying Petitioner's Motion to Vacate Judgment and Dismiss the Case, Judge Gasch succinctly summed up one of the reasons which led to his decision:

> ". . . This Court finds that, in view of (the) numerous decisions in the United States Court of Appeals for the District of Columbia and also in the Supreme Court of the United States, jurisdiction is properly vested in the District Court for the District of Columbia. To hold otherwise would be to deny a forum to those employees covered by the D.C. Workmen's Compensation Act who are injured

> outside the United States . . . This decision is in part motivated by the unique position of the District of Columbia and the extraterritorial provisions of its Workmen's Compensation Act." (Petitioner's Appendix, 3a).

Petitioner's reliance on *Continental Fire and Casualty Insurance Company v. O'Leary*, 236 F.2d 282 (9 Cir. 1956) and *Bassett v. Massman Construction Company*, 120 F.2d 230 (8 Cir. 1941) is entirely misplaced. In the former case, the issue was not the extraterritorial effect of the Act, but rather, whether or not Alaska, not yet a state, qualified as a "judicial district" within the meaning of 33 U.S.C. 921(b). In the latter case, the issue involved the question of which of two judicial districts would have jurisdiction over an injury which occurred in middle of the Mississippi River. Clearly, these two cases are readily distinguishable from the case at hand. In neither case was there involved any statute comparable to D.C. Code 36-501. As such, it becomes apparent that there is *no* conflict between the Eighth and Ninth Circuit and the District of Columbia Circuit as the Petitioners claim.

B. THE EVIDENCE DEMONSTRATES THAT SUBSTANTIAL CONNECTIONS EXISTED BETWEEN THE EMPLOYEE-EMPLOYER RELATIONSHIP AND THE DISTRICT OF COLUMBIA SO AS TO SUPPORT THE FINDING OF THE DISTRICT COURT AND THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA THAT THE DEPUTY COMMISSIONER HAD JURISDICTION OVER THE CLAIM.

As noted in the preceding section, the District of Columbia Workmen's Compensation Law applies to employees of "every employer carrying on any employment in the

District of Columbia." D.C. Code 36-501. As with other sections of the Act, this section was intended by Congress to be liberally construed by the Courts. *Standard Accident Insurance Company v. Hoage*, 62 App. D.C. 245, 66 F.2d 275 (1933). The most notable interpretation of this section is found in *Cardillo v. Liberty Mutual Insurance Company*, 330 U.S. 469 (1947). In that case, the Supreme Court stated that the Deputy Commissioner would have jurisdiction to consider a claim when it is determined that

> "[there is] some substantial connection between the District and the particular employee-employer relationship . . ." 330 U.S. at 476.

At the same time the Court noted:

> "Whether this language covers employees who are more *remotely related* to the District is a matter which we need not discuss and any arguments based upon such hypothetical situations are without weight in this case." 330 U.S. at 475-476 (Emphasis supplied).

Petitioner contends that this case presents for resolution questions left open by the Court in the *Cardillo* case, *supra*. However, upon examination of the facts of the instant case, it becomes apparent that Capitol Tile and Marble, Inc., was an employer "carrying on . . . business in the District of Columbia" at the time of the injury to the Respondent, that there were "substantial connections" between the Petitioner, his employer and the District of Columbia, and that the employee-employer relationship with the District could in no manner be classified as "remote".

Capitol Tile and Marble, Inc. is licensed to do business in the District of Columbia and, in fact, performs a substantial proportion of its work in the District. This pattern is not occasional but rather is one that is continuous in nature. The company has projected itself into the economic life of the District in a very substantive manner. This latter point is exemplified by the fact that at the time of the injury to the appellee, four of Capitol Tile and Marble's seven projects were located in the District of Columbia. During the year which preceded the injury, the employer paid out a considerable sum of money for labor performed by its employees on jobs located in the District. Additionally, the company paid a variety of taxes imposed by the District of Columbia in connection with the firm's operations.

The Respondent in this case, a member of Local No. 3 of the Terrazo Workers and Tile Setters Union in the District, had been employed by Capitol Tile and Marble for approximately a year and a half at the time he was injured. During the year immediately preceding the accident, he earned a substantial proportion of his wages from work he performed in the District. His salary checks for this work were delivered to him at jobsites in the District. Under the terms of his employment, he was subject to being sent into the District at any time by his employer. In fact, on the day of his injury, Respondent spent the morning working on a project then in progress at St. Elizabeth's Hospital.

In light of this rather lengthy recitation of "substantial connections" between the employer, the employee and the District, there can be no question that Capitol Tile and Marble was an "employer" within the meaning of the District of Columbia Workmen's Compensation Act

and, therefore, both it and its employee come within the ambit of the Act. Consequently, it can be seen that the Deputy Commissioner has jurisdiction to consider the claim.

Respondent's situation is by no means unique. Over the years, the Courts of the District of Columbia have had occasion to decide numerous cases involving claimants who were injured while working outside the District. See *Amalgamated Association v. Adler*, 119 U.S. App. D.C. 274, 340 F.2d 799 (1964); *United States Fidelity and Guaranty Company v. Donovan, supra; Travelers Insurance Company v. Cardillo, supra; Travelers Insurance Company v. Cardillo; Moyer v. Cardillo, supra.*

In *Moyer v. Cardillo, supra*, the claimant, a Maryland resident, was injured in Maryland while on the premises of his employer. The employer carried on the majority of his business in Maryland but performed some work in the District of Columbia at the time of the accident. The Deputy Commissioner rejected the employee's claim for lack of jurisdiction, but this finding subsequently was reversed by the Court of Appeals. In its opinion, the Court stated that the fact that business was being carried on in the District by the employer was sufficient to entitle the employee to compensation even though he was injured in Maryland.

Other jurisdictions, such as New York, having similar compensation statutes often have applied them in cases in which the claimant, although injured in another state, had sufficient contacts with the state in which the claim was filed so as to bring him within the ambit of the state act. See *Commission of Taxation and Finance v. Fiberdine Distributors, Inc.*, 25 A.D. 2d 898, 269 N.Y.S. 2d 205 (1966);

McMains v. Trans World Airlines, Inc., 18 A.D. 2d 956, 237 N.Y.S. 2d 812 (1963); *Armstrong v. Aero Mayflower Transit Co.*, 14 A.D. 2d 958, 221 N.Y.S. 2d 225 (1961).

It should be noted that the cases of *Pacific Employer's Insurance Company v. Industrial Accident Commission*, 306 U.S. 493 (1939) and *Alaska Packers Association v. Industrial Accident Commission*, 294 U.S. 532 (1935), upon which Petitioners rely, are inapposite in this instance. In the first place, neither case deals with a situation arising under the Longshoremen's and Harborworker's Compensation Act. Even more importantly, the requirements of due process and full faith and credit raised in the above cases are clearly met here. The District of Columbia had a legitimate interest in the regulation of this employee-employer relationship because of the substantial connections herein demonstrated between this particular employee-employer relationship and the District. In such a case, the D.C. Workmen's Compensation Law can in no conceivable manner be said to constitute an arbitrary or unreasonable exercise of power. Quite the contrary, for where such substantial connections are found the Law has been held to fully satisfy any and all claims of full faith and credit or due process. *Cardillo v. Liberty Mutual Insurance Company, supra*, at 476.

In addition to the foregoing points, it can be seen that the District of Columbia is in a unique position. The physical boundaries of the District are of less importance than those of other jurisdictions. The flow of traffic and business between it and the contiguous metropolitan area is ever on the increase. Workers based in this area often travel between the various jurisdictions several times per day. Thus, the precise location of an accident is of little consequence if the worker has ties with the District. It

was for these reasons that Congress enacted the extraterritorial provisions of the District of Columbia Workmen's Compensation Act which should be applied in the instant case.

The present case does not present an instance where those issues left open in the *Cardillo* case, *supra*, need be decided. On the facts, this is not a case where the District of Columbia Workmen's Compensation Law is applied to an employer or employee "remotely related" to the District. Rather, the requisite "substantial connections" are readily apparent, bringing the instant case clearly within the scope of *Cardillo* decision, *supra*, and rendering further judicial consideration of this matter unnecessary.

VII. CONCLUSION

For the foregoing reasons the Respondent respectfully submits that the Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit be denied.

Respectfully submitted,

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